



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0306; FRL-11024-01-OGC]

Proposed Consent Decree, Unreasonable Delay Claim Regarding Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, Memorandum entitled Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency, notice is hereby given of a proposed consent decree that resolves *Center for Food Safety, et al. v. U.S. Environmental Protection Agency*, a case in the United States District Court for the Northern District of California (4:22-cv-6001-JST) that alleges EPA unreasonably delayed responding to a petition for rulemaking, submitted to EPA on or around July 10, 2017, relating to the revision of testing requirements of pesticides prior to registration.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0306, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allison Payne, Pesticides and Toxic

Substances Law Office; telephone (202) 564-8501; email address: payne.allison@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0306) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Consent Decree

Prior to this lawsuit being filed, EPA received a petition on or around July 10, 2017, requesting that EPA (1) revise pesticide registration regulations to take into account all pesticide ingredients (active, inert and adjuvant) and their effects on the environment; (2) revise pesticide registration regulations to require whole pesticide formulation and tank mixture testing to take into account synergistic effects; (3) revise pesticide registration regulations to require inert ingredients and whole pesticide formulations testing for chronic toxicological effects and degradation; (4) revise pesticide registration regulations to require Endangered Species Act (ESA) consultation on the effects of whole pesticide formulations and tank mixtures on threatened and endangered species; and (5) assuming the regulations were revised as petitioners

have requested, petitioners also request that EPA apply those revised regulations in conducting statutorily-mandated registration reviews of pesticides (hereinafter, these requests will be referred to as the “2017 Petition Requests”). EPA sought public comment on the 2017 Petition. *See* Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration; Request for Comment, 83 FR 65672 (December 21, 2018) (the “Request for Comment”). EPA received approximately 564 comments. Plaintiffs filed a Complaint on October 12, 2022, alleging that EPA’s failure to respond to the petition constitutes an unreasonable delay under Section 706(1) of the Administrative Procedure Act, 5 U.S.C. 706(1).

This proposed consent decree states that no later than September 29, 2023, the appropriate EPA official shall, by letter, either grant, deny, or grant in part and deny in part each of the 2017 Petition Requests. Court approval of this proposed consent decree would resolve all claims in this case except for the claim for the costs of litigation, including reasonable attorneys’ fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the APA or FIFRA. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed consent decree will be affirmed and entered with the Court.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0306 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Randolph L. Hill,

Associate General Counsel.

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